

Report submitted by Western Sahara Resource Watch
and Emmaus Stockholm

In view of
Morocco's fourth cycle Universal Periodic
Review

41st session of the Human Rights Council
October-November 2022



Contact: Sara Eyckmans
Email: coordinator@wsrw.org
Address: Edinburgstraat 26
1050 Brussel
Belgium
www.wsrw.org

Contact: Caroline Nord
Email: caroline.nord@emmausstockholm.se
Address: Vretensborgsvägen 6
126 30 Hägersten
Sweden
www.emmausstockholm.se

EXECUTIVE SUMMARY

THIRTY YEARS after an agreement for a United Nations administered referendum in Western Sahara, the Saharawi people – the sole original inhabitants of the territory until 1975 – have yet to be allowed the opportunity to exercise their right to self-determination as a non-self-governing people. Western Sahara's continuing status as a Non-Self-Governing Territory confers an added onus on the Human Rights Council to inquire diligently into the human rights situation in the territory. This is all the more pertinent given the responsibility of the United Nations for Western Sahara under the UN Charter, and as a party to the post-1988 UN/Morocco/Polisario Front referendum and cease-fire agreement – the latter of which was violated by Morocco in November 2020, leading to the resumption of armed conflict. The particular status of Western Sahara must be recalled when assessing how human rights obligations have been allowed to be diminished in the territory during the period of the present review.

As Morocco continues to assert its presence manu militari in large parts of Western Sahara, it is obligated to report about and comply with a significant number of well-established human rights obligations. Morocco's commitments under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), together with the Fourth Geneva Convention apply in the parts of Western Sahara that are under Moroccan control, but also have effect for the people of Western Sahara living outside of those areas.

This joint submission addresses Morocco's continuing violation of the right to self-determination and the related matter of the Saharawi people's rights to the resources of their territory. It does so in the context of Morocco's fourth Universal Periodic Review, with reference to applicable human rights instruments, agreements of the parties concerned, and jurisprudence relevant to what the United Nations calls the "question" of Western Sahara. Recent developments concerning human rights in occupied Western Sahara are canvassed. The results of the most recent ICESCR and ICCPR review of Morocco in Western Sahara are considered. The connection between the basic right of the Saharawi people and the exploitation of their resources while under occupation is assessed.

The report concludes with 18 recommendations for the Human Rights Council to request of Morocco, among them a confirmation of the Saharawi right to self-determination in the accepted sense, respect for international human rights and humanitarian law, a demonstrable support to the United Nations in its administration of a self-determination referendum, and an assurance of political and social space for Saharawi people and organizations inside Western Sahara to express concerns about natural resources and environmental protection matters – all recommendations that Morocco has received in previous UPR cycles but has refused to implement.

THE SUBMITTING ORGANISATIONS

1. Western Sahara Resource Watch (WSRW) is an independent, non-governmental organization based in Brussels with an international board of directors, operating in more than 40 countries. Established in 2005, the organization's mission is to research, monitor and provide commentary about the development and export of natural resources from the Moroccan occupied parts of Western Sahara while addressing related human rights and environmental protection issues. Over the past decade, WSRW has highlighted problems of illegal fishing, phosphate rock exports, petroleum exploration and energy infrastructure in the territory of Western Sahara. To an extent, WSRW's research covers the responsibility - abandoned by the international community and by Spain in particular - of providing the information on the economic and social conditions in non-self-governing territories as required by article 73 of the UN Charter.
2. Emmaus Stockholm is an independent organization that has existed since the beginning of the 1970's. Emmaus Stockholm aims to contribute to a sustainable world through reuse, development projects and information work. The organization has supported the liberation movements that fought for liberation from the colonial powers in Angola, Mozambique, Namibia, South Africa and Zimbabwe, among others. In that vein, Emmaus Stockholm now advocates for Western Sahara and the Saharawi people's right to self-determination. Emmaus Stockholm backs humanitarian projects in the Saharawi refugee camps and information work on Western Sahara. The organization also supports projects in the wider Maghreb region and in Palestine.

MOROCCO'S FAILURE TO RESPECT, PROTECT AND FULFILL THE RIGHT TO SELF-DETERMINATION IN WESTERN SAHARA

3. The UN Charter is the pre-eminent international law instrument applicable to Western Sahara, animating how other human rights instruments and norms apply in the territory. We begin by observing that two Charter provisions continue to be violated by Morocco: (a) the requirement to respect territorial integrity (article 2(4)) and (b) the failure to ensure for the Saharawi people the exercise of their right to self-determination (article 73). The latter right is consistent with common Article 1 of the ICCPR and ICESCR which makes paramount the right of self-determination for a Non-Self-Governing people to “freely determine their political status”.
4. Since Morocco’s most recent UPR in 2017, absolutely no progress has been made to implement or advance the right to self-determination in Western Sahara, notwithstanding recommendations received during 2012 and 2017 UPR sessions to (finally) allow the people of Western Sahara to exercise their right to self-determination, which Morocco refused to accept.¹ In a similar vein, Morocco also “partially rejected” all recommendations rendered during the same two UPR sessions pertaining to the registration of civil society organisations advocating for the Saharawi people’s right to self-determination.² Morocco sought to justify its rejection by stating that “Morocco does not recognize the existence of a Sahraoui people as stated in the commented recommendations”.³
5. Morocco has also refused to make any progress on similar concerns and recommendations put forth by both the UN Committee for Economic, Social and Cultural Rights and the UN Human Rights Committee in their most recent ICESCR and ICCPR review of Morocco. In its 2015 ICESCR review, the eponymous Committee “reiterates its concern about the failure to find a solution to the issue of the right to self-determination of the Non-Self-Governing Territory of Western Sahara”, recommending that Morocco: “Strengthen its efforts, under the auspices of the United Nations, to find a solution to the issue of the right to self-determination for Western Sahara, as established in article 1 of the Covenant, which recognizes the right of all peoples to freely determine their status and freely pursue their economic, social and cultural development. The Committee recalls that States parties to the Covenant are obligated to promote the realization of the right of self-determination in Non-Self-Governing Territories and to respect that right, in

¹ See Morocco’s responses to Recommendations 144.26 (Mozambique), 144.68 (Zimbabwe) and 144.243 (Namibia) made during its Third Review (Session 27), dated 15 December 2017.

² See Morocco’s responses to Recommendations 144.58 (Iceland) and 144.61 (Norway) made during its Third Review (Session 27), dated 15 December 2017. See also Morocco’s responses to Recommendation 131.4 (Norway) made during its Second Review (Session 13), dated 19.02.2012.

³ The Kingdom of Morocco’s position on the Recommendations issued after review of its National Report under the third cycle of the Universal Periodic Review (UPR), August 2017, p. 5.

conformity with the provisions of the Charter of the United Nations”.⁴ A similar recommendation was issued by the UN Human Rights Committee in 2016, calling on Morocco to “continue and increase the efforts undertaken within the framework of negotiations concerning the status of the Western Sahara under the auspices of the Secretary-General of the United Nations so that the people of the Western Sahara may enjoy their right to self-determination”.⁵

6. Morocco’s manifest denial of the Saharawi right to self-determination, and its ignoring of its obligation to promote and respect that right, is evident by the complete omission in literally every State report Morocco has submitted to the UN monitoring mechanisms. Morocco’s National Reports submitted to the Human Rights Council during its 2012 and 2017 UPR reviews made no mention Western Sahara nor of the right to self-determination for the people of Western Sahara. At most, reports submitted to the UN monitoring mechanisms are used to market an ‘autonomy proposal’ as being the sole solution to the conflict – a proposal well outside the principle of self-determination as provided in the UN Charter and treaties, as it would consist of a referendum with the single option of autonomy, and not the required options ranging from independence to integration. When the CESCR reminded Morocco in October 2015 of its duty to “promote and respect the right to self-determination in conformity with the UN Charter”, it was met with a vehement response, accusing the Committee of an “askew and partial approach”, “flagrant partiality” and “surprising political stands passed on by other hostile parties to Morocco’s territorial integrity”.⁶
7. Morocco’s manifest contravention of the long-settled norm of self-determination prevents the meaningful realization of what are otherwise long-accepted human rights. The rights of the Saharawi people to basic human security, to exercise civil, educational and political rights, remain grossly impaired because the UN Charter is not in good faith respected by Morocco. We maintain that the continued denial of the Saharawi people’s right to self-determination is the root cause of all other human rights violations in the territory of Western Sahara.
8. Morocco committed to ensuring the self-determination of the Saharawi people in the 1990-91 UN/Morocco/Polisario Front Agreement, guaranteeing a ceasefire arrangement

⁴ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the fourth periodic report of Morocco, 22 October 2015, E/C.12/MAR/CO/4*, §5-6.

⁵ UN Human Rights Committee, Concluding Observations on the sixth periodic report of Morocco, 1 December 2016, CCPR/C/MAR/CO/6, §10.

⁶ Comments and Responses of the Moroccan Government to the Observations and Recommendations of the Committee on Economic, Social and Cultural Rights, following the review of the 4th national report related to the implementation of ICESCR provisions.

https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MAR/INT_CESCR_COB_MAR_21960_E.pdf

to ensure a self-determination referendum could be conducted under UN auspices.⁷ After the UN Charter, such a treaty commitment of the three parties makes for a paramount human rights duty. Accordingly, there is much in law, the expectations of the organized international community and the stated commitments of the parties which animates Article 1 of both Covenants in Western Sahara.

9. The Moroccan monarch's annual 6 November speeches which commemorate the 1975 invasion of Western Sahara are emblematic of Morocco's manifest unwillingness to uphold the right to self-determination in Western Sahara. Speaking in November 2021 on the 46th anniversary of the Green March, he stated that "Morocco is not negotiating over its Sahara. The Moroccaness of the Sahara never was - and never will be - on the negotiating table."
10. Nonetheless, protests calling for the exercise of self-determination or pro-independence manifestations take place almost daily in the parts of Western Sahara under Moroccan military control. These protests are routinely met with well-documented violence by Moroccan authorities. The OHCHR has in recent years issued several statements expressing concern about the clampdown on, or calling for the release of, Saharawi civilians advocating for self-determination.⁸ OHCHR's concerns have been reported on by the UN Secretary-General to the UN Security Council, who also highlighted in his most recent report that "OHCHR was unable to conduct any visits to the region for the sixth consecutive year. Lack of access by OHCHR to Western Sahara continued to result in substantial gaps in human rights monitoring in the Territory".⁹
11. Since its conception in 1991, Morocco has obstructed the operation of the UN Mission for the Referendum in Western Sahara (MINURSO). The carrying out of the referendum has been consistently sabotaged by Morocco. In recent years, Morocco prevented the

⁷ The 1991 settlement agreement, imposing a ceasefire and the requirement for a self-determination referendum is detailed in two reports of the UN Secretary-General to the UN Security Council, UN docs. S/21360 (18 June 1990) and S/22464 (19 April 1991). "The two parties, namely the Kingdom of Morocco and the Frente POLISARIO, recognize in the settlement proposals that the sole and exclusive responsibility for the organization and conduct of the referendum is vested in the United Nations." UN doc. S/22464 § 9. See also UNSC Resolution 621 (1988) (September 1988).

⁸ See e.g. UN Human Rights Council, Working Group on Arbitrary Detention, A/HRC/WGAD/2019/67, Opinion No 67/2019, 18-22 November 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session86/A_HRC_WGAD_2019_67_AdvanceEditedVersion.pdf, OHCHR, AL MAR 5/2020, 7 January 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glD=25731>, UN Human Rights Council, Working Group on Arbitrary Detention, A/HRC/WGAD/2020/68, Opinion No 68/2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_68.pdf

⁹ UNSC, Report of the Secretary-General on the situation concerning Western Sahara, October 2021, §73, https://minurso.unmissions.org/sites/default/files/unsg_report_october_2021.pdf

nomination of a new personal envoy of the UN Secretary-General to Western Sahara, further delaying the process.

12. The African Union Summit in January 2018 reiterated its call “for the holding of a free and fair referendum for the people of Western Sahara.”¹⁰ The AU has continued to emphasize the need to find a solution to the conflict “which will provide for the self-determination of the people of Western Sahara”¹¹, including through the Peace and Security Council (PSC) which has asserted the same position.¹²
13. Since 2015, the Court of Justice of the European Union has issued five consecutive rulings, all concluding that Morocco has no sovereignty over Western Sahara, nor any international mandate to administer it, as the territory is “separate and distinct” from Morocco. As a consequence, the Court ruled, EU agreements with Morocco cannot be extended to Western Sahara in a lawful manner, unless with the explicit consent of the people of the territory – the latter being the natural corollary of the people of Western Sahara’s right to self-determination – through their UN-recognised representative, the Polisario Front.¹³
14. The rulings of the EU Court of Justice are consistent with a decision issued on 4 July 2014 by Spain's criminal appeals court, the Audiencia Nacional, confirming that Spain, not Morocco, is the administering power over Western Sahara, and that the “territory cannot be considered Moroccan”. The judgment states that the 1975 Madrid Agreement partitioning the then Spanish Sahara to Morocco and Mauritania in 1975, is “null and without legal effect”.¹⁴

¹⁰ African Union, Assembly of the Union, Twenty-Eighth Ordinary Session, 31 January 2017. “Decision on the Report of the Peace and Security Council on its activities and the State of Peace and Security in Africa”, <https://au.int/en/decisions/decisions-declarations-and-resolution-assembly-union-twenty-eight-ordinary-session>

¹¹ African Union, Assembly of the Union, Thirty-First Ordinary Session, 1-2 July 2018, Decisions, Declarations and Resolution, https://au.int/sites/default/files/decisions/36130-assembly_au_dec_690_-_712_xxxi_e.pdf

¹² Peace and Security Council, 9 March 2021, Communique of the 984th meeting of the PSC held on 9 March 2021, on the follow up on the implementation of paragraph 15 of the decision on Silencing the Guns of the 14th Extraordinary Summit, <https://reliefweb.int/report/western-sahara/communique-984th-meeting-psc-held-9-march-2021-follow-implementation-paragraph>

¹³ The Rulings for cases T-512/12, T-180/14, C-266/16, T-275/18 and combined cases T-344/19, T-356/19 and T-279/19 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

¹⁴ Spanish National High Court. Criminal Division, 4 July 2014, ECL1:ES:AN:2014:256A, English official translation available via: http://wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_izik.pdf

THE RIGHT TO RESOURCES

15. Article 1(1) of both the ICCPR and ICESCR requires the Saharawi people, being entitled to self-determination to be permitted to “freely pursue their ... economic [and] social ... development”, while Article 1(2) of the Covenant adds that the Saharawi people may “freely dispose of their natural wealth and resources”. Certain additional obligations in respect of a people under occupation under international humanitarian law are found in the Fourth Geneva Convention, namely in Articles 33 (prohibition against pillage); and 49 (the prohibition against an Occupying Power transferring its own civilian population into a territory it occupies). It is the nexus between the pillage of natural resources in Western Sahara coupled with the introduction of settlers from Morocco - now substantially outnumbering the Saharawi population in their homeland - that is the gravest concern for impeding the work, civic participation and social circumstances of the Saharawi people in the occupied part of the territory.
16. Western Sahara is endowed with several important natural resources. The following are being exploited by Morocco: phosphate mineral rock; the Atlantic coastal fishery; agricultural products; sand aggregates; minerals. In addition, the petroleum and gas potential of the territory is continuously explored. In recent years, Morocco has erected renewable energy infrastructure in the territory, reducing the cost of electricity for exploitation of resources, in particular the phosphate industry. Based on Morocco’s projections to 2030 the energy produced from wind in occupied Western Sahara will then constitute 52.25% of Morocco’s total wind capacity,¹⁵ while Western Sahara’s share of solar power generation could be 32.64% of Morocco’s total solar capacity.¹⁶ Connecting the renewable projects in the occupied territory to its own national grid, Morocco grows ever more dependent on its unlawful military presence in the territory. Given the additional factor of the Moroccan monarchy’s direct financial interests in the renewable projects in Western Sahara, the entire development impairs any motivation to credibly engage with the UN for a just settlement to the conflict.¹⁷
17. It is worth observing that over the course of the last decade, numerous companies have ended their involvement in or imports from Western Sahara as a result of civil society pressure over human rights, as well as due to active engagement and divestments by institutional investors internationally.

¹⁵ WSRW.org, 3 November 2021, Dutch-Belgian firm to build conflict wind farm, <https://wsrw.org/en/news/dutch-belgian-firm-to-build-conflict-wind-farm>

¹⁶ WSRW.org, 6 October 2021, Greenwashing Occupation, https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/405/616014d0c1f1d_Greenwashing-occupation_web.pdf

¹⁷ Ibid.

18. In its most recent review of Morocco, the CESCR notes its concern “that the Sahraouis’ right to participate in the use and exploitation of natural resources is still not respected.” It was on this basis that the Committee recommended Morocco “guarantee respect” for the “consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.”¹⁸ With regard to the Saharawis who are refugees in Algeria, the Committee also recommended Morocco “take appropriate steps to enable the Sahraouis to access their land and natural resources”.¹⁹ For its part, the UN Human Rights Committee in its most recent report on Morocco expressed deep concerns of the management of the natural resources in Western Sahara, recommending Morocco secure “consent for development projects and resource extraction operations” from the people of Western Sahara.²⁰ To date, Morocco has not taken any steps in that direction: the taking of resources continues uninterrupted and without the consent of the Saharawi people.²¹
19. In this context, it is worth recalling the 2002 legal opinion of the UN Legal Office, prepared on request of the UN Security Council, which emphasized that Morocco cannot be considered the administering power of Western Sahara, yet has obligations under international law to respect the rights of the people living in the territory it illegally annexed. The 2002 opinion concluded “that any further natural resource exploitation or exploration would be illegal” if it proceeded in disregard of the wishes and interests of the people of Western Sahara”.²² Here, it is crucial to stress the inseparable connection between the notions of “wishes” and “interests” in this context. Morocco’s argument that its operations in the territory benefit those living there - a questionable allegation because Morocco will not allow for independent verification - cannot be a substitute for the expression of consent. As the EU Court of Justice concluded: “It follows expressly that the prospecting and exploitation activities carried out in Western Sahara must be consistent not only with the interests of the people of that territory but also with their will and that, failing this, they are contrary to those principles [of international law applicable to non-self-governing territories].”²³

¹⁸ UN Committee on Economic, Social and Cultural Rights, *Ibid*, §5-6.

¹⁹ *Ibid*. §7-8.

²⁰ UN Human Rights Committee, *Ibid*, §10.

²¹ Taking is defined for the present purpose as the administration, development, sale and export of natural resources by the government of Morocco, state agencies and parastatal corporations, with revenues from such activities flowing to Morocco’s central state treasury.

²² United Nations Security Council, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, 29 January 2002.

²³ Judgment of the General Court of the European Union, 29 September 2021, T-279/19, *Front Polisario v. Council of the European Union*, §389.

20. Against this background, it is important to note the difference between the “population” of the territory and the Saharawi “people”. As such, while the definition “population” includes Moroccan settlers who have come to the territory after 1975 (or who spend parts of the year there as seasonal workers), the term “people” can only mean the Saharawi as the sole, original inhabitants of the territory prior to Morocco’s invasion and as such having sovereign rights to it.²⁴ An important part of a strategy to annex by resource development has been the settlement of Moroccan nationals into Western Sahara. This introduced population continues to be the main beneficiary of business and employment opportunities created from resource extraction in the territory.²⁵ The presence of settlers in a place that Morocco styles as its so-called “southern provinces” objectively deprives the Saharawi people of economic opportunities and serves as a pretext for a military force to ostensibly protect such settlers along with building infrastructure to extend the occupation. The use of settlers is not only instrumental to Morocco in propagating the misconception that the exploitation of Western Sahara’s resources is beneficial to the Saharawis, it creates the false impression that the Saharawis have been consulted about and agree to the exploitation.²⁶
21. The African Union Peace and Security Council (PSC) has repeatedly called on the UN Security Council to “find an effective response to [...] the illegal exploitation of natural resources of the territory”.²⁷ The PSC “urges the Kingdom of Morocco not to enter into

²⁴ See e.g. CJEU case T-279/19, Judgment of the General Court of the European Union, Ibid, §337.

²⁵ The 2019 Status Report by the Research Department of the German Bundestag, “Völkerrechtliche Aspekte des Westsaharakonflikts” (WD 2 - 3000 - 025/19) concludes that “the Moroccan government’s policy of settlement of Moroccan citizens in the territory of Western Sahara”, including indirect “measures that promote and facilitate migration into the occupied territory” like financial incentives and infrastructure projects, “substantiates a violation of Art. 85(4)(a) AP I in conjunction with Art. 49 (6) GC IV and, at the same time, an infringement of the prohibition of the transfer of parts of its own population into occupied territories, as stipulated in Article 49(6) of the Fourth Geneva Convention, and also established by customary law.” <https://wsrw.org/files/dated/2020-05-04/bundestag-statusreport-ws2019.pdf> This echoes the US Department of State’s 2019 Country Report on Human Rights in Western Sahara: “As an inducement to relocate to the territory, workers in the formal sector earned up to 85 percent more than their counterparts in internationally recognized Morocco. The government also provided fuel subsidies and exempted workers from income and value-added taxes.” The report also notes that Saharawis “faced discrimination in hiring and promotion.” <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/western-sahara/>

²⁶ An example of how Moroccan groups, businesses and politicians have served to create the image that Saharawis had been consulted on the proposal to amend the EU-Morocco trade agreement so that it would explicitly refer to Western Sahara in its scope of application, can be found here: WSRW.org, 24 May 2018, Exclusive: here are the Moroccan groups that the EU consulted, <https://wsrw.org/en/a105x4165>. The Court of Justice of the European Union concluded that a consultation of concerned parties could not substitute the expressed consent by a representative body. See §307-392 in CJEU case T-279/19, Ibid.

²⁷ Peace and Security Council, 9 March 2021, Communiqué of the 984th meeting of the PSC held on 9 March 2021, on the follow up on the implementation of paragraph 15 of the decision on Silencing the Guns of the 14th Extraordinary Summit, <https://reliefweb.int/report/western-sahara/communique-984th-meeting-psc-held-9-march-2021-follow-implementation-paragraph>

contracts for the exploration and exploitation of Western Sahara's natural resources".²⁸ A Legal Opinion issued by the African Union concluded that "the people of Western Sahara and their legitimate representatives must not only be consulted but they must consent and effectively participate in reaching any agreement that involves the exploitation of natural resources in the Territory of Western Sahara."²⁹

22. Morocco has never sought the consent of the Saharawi people with regard to any resource-related activity it has undertaken in the parts of Western Sahara that it holds under military control. The Saharawis, on the other hand, have continuously spoken out against Morocco's ongoing exploration and exploitation of their resources. As with protests rooted in the call for self-determination, protests opposing the resource plunder, or demanding social and economic rights or equal benefits from the resource-based activities, are routinely met with violent dispersals by the Moroccan police or security apparatus, harassment of protesters and their family members, arrests and arbitrary detentions, house ransacking, convictions based on false grounds or false testimonies obtained through torture, and incarcerations.
23. Leading figures who speak out against Morocco's taking of their occupied homeland's resources face severe human rights abuses. The President of the League for the Defense of Human Rights and Protection of Natural Resources in Boujdour human rights activist Sultana Khaya, has been under house arrest since November 2020. Her home has been cut off from electricity and running water. Relatives and neighbours have frequently been unable to deliver vital provisions. Any attempt of Sultana Khaya to leave her house results in threats and physical attacks by Moroccan police officers. The house is regularly invaded and ransacked by Moroccan soldiers, who have committed severe human rights violations vis-à-vis Khaya, her mother and sister, including rape of the two sisters. Sultana Khaya was also injected with an unknown substance in November 2021. Khaya's predicament was highlighted in statements issued by the UN special rapporteur on the situation of human rights defenders in July and December 2021.³⁰ In an interview in February 2022,

²⁸ Peace and Security Council, 20 March 2017, Communique of the 668th meeting of the Peace and Security Council of the African Union (AU) on the situation in Western Sahara, <https://www.peaceau.org/en/article/communique-of-the-668th-meeting-of-the-peace-and-security-council-of-the-african-union-au-on-the-situation-in-western-sahara>

²⁹ African Union, The Office of the Legal Counsel and Directorate for Legal Affairs of the African Union Commission, 14 October 2015, Legal Opinion on the legality in the context of International law, including the relevant United Nations Resolutions and OAU/AU Decisions, of actions allegedly taken by the Moroccan authorities or any other state, group of states, foreign companies or any other entity in the exploration and/exploitation of renewable and non-renewable natural resources or any other economic activity in Western Sahara, Art. 69 (c), https://au.int/sites/default/files/newsevents/workingdocuments/13174-wd-legal_opinionof-the-auc-legal-counsel-on-the-legality-of-the-exploitation-and-exploration-by-foreign-entities-of-the-natural-resources-of-western-sahara.pdf

³⁰ OHCHR, Morocco: UN human rights expert decries "clampdown" on human rights defenders <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27244&LangID=E>
UN Special Rapporteur on Human Rights Defenders, 23 December 2021, Sahrawi WHRD Reports Violent Attacks

Khaya stated that “actions must be taken to stop the plundering of the renewable or non-renewable natural resources of my country, Western Sahara. The profits serve economically and politically for the occupation and its repressive measures.”³¹

24. The continued imprisonment of 19 Saharawi activists, known as the Gdeim Izik group, is another case in point. The men were arrested over their alleged participation in the 2010 Gdeim Izik protest – a mass tent camp in the desert, where thousands of Saharawis had gathered in protest of their socio-economic marginalization as a people – while Morocco continued to acquire the revenue from the exploitation of their land’s resources. The Moroccan government’s response – invading and burning down the camp, arresting hundreds of Saharawis in the aftermath and sentencing a group of known Saharawi activists from 20 years to life imprisonment by a military tribunal in 2013 on the back of confessions signed under torture – was sufficiently oppressive to cause a temporary semi-paralysis in the functioning of Saharawi civil society under occupation. One of these political prisoners is the secretary-general of a Saharawi group that monitors the foreign involvement in Morocco’s illegal plunder of the territory. A retrial in the Appeal Court in 2017 upheld the sentences, which were again confirmed by the Court of Cassation in October 2021.³² The arbitrary detainment of the Gdeim Izik prisoners was, amongst other cases, treated in a communication issued by the United Nations Special Procedures on 20 July 2017, signed by the United Nations Working Group on Arbitrary Detention, Special Rapporteur on Freedom of Expression, Special Rapporteur on Human Rights Defenders, Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on Torture. The text emphasizes the group of Saharawi human rights defenders had been arrested and detained in response to their freedom of expression and freedom of assembly in the Gdeim Izik camp, and expresses concern over acts of torture, inhumane and degrading treatment in prison and the violation of the right to a fair trial.³³
25. Since Gdeim Izik, an upsurge in protests rooted in social and economic grievances has been observed in the territory under Moroccan military control. In February 2019, a deadly self-immolation was reported to have taken place over Morocco’s economic restrictions imposed on Saharawis.³⁴ Unemployed young Saharawis are known to take to

Under House Arrest, <https://srdefenders.org/information/sahrawi-whrd-reports-violent-attacks-under-house-arrest/?fbclid=IwAR33gLBUSGWLC0l1v2igCsSSH9YcEh58GLgbxdVNAI0gcbCKtdSFdktEkjw>

³¹ WSRW.org, 11 March 2022, HR activist speaks out against the controversial green energy <https://wsrw.org/en/news/hr-activist-speaks-out-against-the-controversial-green-energy>

³² WSRW.org, 26 November 2020, Life sentences confirmed for political prisoners, <https://wsrw.org/en/news/life-sentences-confirmed-for-political-prisoners>

³³ OHCHR, AL_MAR 3/2017,

https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23226&fbclid=IwAR1-DNy-asBo74awPowBXYmPPUKEPuNWAfSb_oevB3VVJ_Ke7RGmo6KVBu

³⁴ WSRW.org, 04.02.2019, Deadly self-immolation in protest of exclusion of Saharawis, <https://www.wsrw.org/en/archive/4443>

the streets regularly and have set up protest camps.³⁵ A group of 60 Saharawis was involved in the detaining of a bus that belongs to OCP, Morocco's state-owned phosphate company that exploits Western Sahara's phosphate reserves. Protesters have also poured petrol on themselves and threatened to self-immolate in protest of "the systematic marginalisation of Saharawis by the Moroccan occupying regime".³⁶ In addition, there are reports of Saharawis protesting against the confiscation of their land or demolition of their houses for projects of the Moroccan authorities - e.g. for the construction of solar plants - that have been brutally beaten and taken into custody.³⁷ In March 2022, Saharawis locked themselves inside the MINURSO premises in Boujdour, to denounce the taking of the territory's resources.³⁸ Saharawis are increasingly upset over the fact that Morocco's resource exploitation in Western Sahara is carried out without consideration of their consent or interests.

26. Morocco's 2020 violation of the 1991 UN ceasefire and referendum agreement, in response to a Saharawi civilian protest in Guerguerat against the continued taking of Saharawi resources, merits specific mention. For years, Saharawis had taken to the Guerguerat crossing to protest against Morocco's violation of their right to self-determination and taking of their natural resources. Guerguerat is a settlement in the southernmost part of occupied Western Sahara. It is located just north of the Berm - a heavily mined wall erected by Morocco which stretches 2700km across the territory, partitioning it into a Moroccan controlled zone to the west and north, and a Polisario controlled zone to the east and south. For decades, Morocco has been entrenching its occupation of Western Sahara by developing the territory's natural resources, against international conventions that prohibit occupying powers from exploiting resources in occupied territories for their own gain. Some of these resources and the products derived from them are exported to Mauritania in the south. This route involves traffic crossing the Berm south of the settlement of Guerguerat, then traversing the buffer strip for 5km to the border with Mauritania.³⁹ As such, Saharawis have come to perceive Guerguerat as a symbol of Morocco's impunity in taking their resources. Subsequent reports by the UN Secretary General have described the place as "a source for increased tension", where regular protests - including with roadblocks - have required MINURSO to deploy civil-

³⁵ WSRW.org, 26.04.2017, Unemployed Saharawis set up protest camp in occupied Western Sahara, <https://www.wsrw.org/en/archive/3831>

³⁶ WSRW.org, 28.03.2017, Unemployed Saharawi youth hi-jacked OCP bus, <https://www.wsrw.org/en/archive/3792>

³⁷ Arainfo, 02.10.2021, Confiscación y acaparamiento de "grayer" en el Sáhara Occidental ocupado, <https://arainfo.org/confiscacion-y-acaparamiento-de-grayer-en-el-sahara-occidental-ocupado/>

³⁸ Images of the action are available via Equipe Média: https://twitter.com/Equipe_Media/status/1507079030922694664

³⁹ The terms of the 1991 ceasefire agreement describe the Buffer Strip as extending for 5km east and south of the Berm on the Polisario side, which is effectively an exclusion zone or no-man's land, in which no military personnel or equipment are permitted.

military conflict prevention teams to prevent escalation.⁴⁰ On 13 November 2020, Morocco militarily intervened to forcibly reopen the trade route from Western Sahara to Mauritania, which had been blocked by Saharawi protesters for several weeks - a direct violation of the ceasefire agreement. Armed conflict then resumed. It is worth noting that at the time of the signing of the ceasefire agreement in 1991, there was no crossing in Guerguerat. When Morocco started constructing the passage to the south, the UN condemned the undertaking, stating it “involved activities that could be in violation of the ceasefire agreement”.⁴¹

27. In addition to protests inside the territory, the Saharawi people’s United Nations accepted representative organization the Polisario Front, together with their elected government (the Saharawi Arab Democratic Republic), along with Saharawi civil society organisations, have consistently declared that they do not consent to Morocco’s resource exploitation. Subsequent reports by the UN Secretary-General have noted that “Moroccan investments west of the berm continued as previously reported”, and Polisario’s letters of protest “that they are in violation of international law and of the status of Western Sahara as a Non-Self-Governing Territory”.⁴² As an example, the UNSG’s October 2020 report highlighted Morocco’s “construction of a new port approximately 70 kilometres north of Dakhla”, and the Polisario’s protest characterizing the development as one “to consolidate and normalize [the] military occupation and the illegal annexation of parts of Western Sahara”.⁴³
28. Polisario Front’s objection to Morocco’s continued exploitation of the territory’s resources is also evidenced through its initiation of legal proceedings to put a halt to the practice.
- a. Since 2012, the Polisario Front has challenged the Council of the European Union in the EU Court of Justice over the practice of extending EU-Morocco bilateral agreements (on trade, fisheries and aviation arrangements) to include Western Sahara, with the Court ruling in its favour every single time. As noted above, more recent CJEU rulings have concluded that applying arrangements with Morocco to the territory must receive the consent of the people of Western Sahara, regardless of whether implementation of the arrangement is likely to harm or benefit them.
 - b. On 1 May 2017, the bulk vessel *NM Cherry Blossom* was detained during a stop-over in Port Elizabeth under court order, on the application of the Saharawi Arab Democratic

⁴⁰ See, e.g. §4-5 of UNSG report of 2 October 2019 (S/2019/787), https://minurso.unmissions.org/sites/default/files/sg_report_english.pdf and §12 of UNSG report of 7 October 2020 (S/2020/938), https://minurso.unmissions.org/sites/default/files/unsg_report_23_september_s_2020_938_e.pdf

⁴¹ UNSC, Report of the Secretary-General on the situation concerning Western Sahara, S/2001/398, 24 April 2001, §5.

⁴² See e.g. the Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2019/787, §16.

⁴³ Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2020/938 (7 October 2020), §8.

Republic (SADR). The vessel carried 55,000 tonnes of phosphate rock that had been illegally mined and exported from Western Sahara by the Moroccan government. On 23 February 2018, the South African High Court confirmed that the SADR was the owner of the entire cargo aboard of the *NM Cherry Blossom*, and that the ownership was never lawfully vested in the Moroccan exporting companies OCP SA and Phosphates de Boucraa SA, who were thus not entitled to sell the phosphate rock.⁴⁴

29. Morocco has the primary obligation to respect, protect and fulfill the “right to freely dispose of natural resources” as defined by common Article 1 the ICESCR and ICCPR. We observe all the evidence is to the precise opposite: it interferes with the enjoyment of that right, it actively promotes violations of that right by third parties and does not take any appropriate steps to progressively realize full enjoyment of that right. Morocco’s taking of Western Sahara’s natural resources is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but rather to strengthening and maintaining an untenable claim over the territory. The problem has three dimensions: (a) the enrichment of Morocco through the sale of the territory’s natural resources; (b) Morocco’s development of Western Sahara’s resources to further acceptance of its illegal presence in the territory; (c) a reduced availability of non-renewable resources to the Saharawi people when they will eventually realize self-determination.
30. None of the revenues from the resource-exploitation is returned to the Saharawi people, and no accounting of them is publicly available, including in Morocco. The exploitation of Western Sahara’s resources is managed by Moroccan state-owned ministries and agencies.
31. While there are indeed a few Saharawi individuals who are known to profit from the exploitation of Western Sahara’s resources by their ownership of exploitation licenses in various sectors, they are – without exception – persons who have sworn allegiance to the King of Morocco. Every Saharawi group and individual that our two organizations contacted (WSRW consistently for more than a decade) insists that the overwhelming majority of the Saharawi people do not profit from Morocco’s exploitation of their homeland’s resources. Critically, the Saharawi people who reside in the refugee camps at Tindouf do not receive any gain from such resources. Further, the total amount of annual multilateral aid given to the Saharawi refugees is a small percentage of what Morocco earns annually in revenues from selling Western Sahara’s resources. In 2021, Morocco’ exports of phosphate rock from occupied Western Sahara reeled in an estimated 349 million USD⁴⁵, while the World Food Programme’s budget for the provision of basic

⁴⁴ High Court of South Africa, 23 February 2018, Case 1487/2017, https://wsrw.org/files/dated/2018-02-23/20180223_south_africa_ruling.pdf

⁴⁵ WSRW, “P for Plunder 2022”, April 2022, to be found via <https://wsrw.org/en/news/the-phosphate-exports>

foodstuffs to the Saharawi refugees in that same year amounted to 21 million USD⁴⁶ - 6% of what Morocco earns through the sale of the territory's phosphate rock alone.

32. These circumstances have been ably described by the UN Secretary-General in reports to the UN Security Council about the “question” of Western Sahara:
“The dire humanitarian situation, coupled with the absence of access to the natural wealth and resources in Western Sahara west of the berm, prevented the Western Saharans in the refugee camps from enjoying their economic, social and cultural rights”.⁴⁷ “In the light of continued interest in the exploration and exploitation of the natural resources of Western Sahara, I reiterate my call on all relevant actors to ‘recognize the principle that the interests of the inhabitants of these territories are paramount’ in accordance with Article 73 of the Charter of the United Nations” – the right to self-determination.⁴⁸

PROPOSED RECOMMENDATIONS

33. In view of the foregoing, Emmaus Stockholm and WSRW respectfully request the Members of the UN Human Rights Council issue the following recommendations to Morocco on the conclusion of the present Universal Periodic Review:
- I. Declare formally the kingdom's acceptance of the right of the Saharawi people to self-determination, and their right to establish an independent sovereign state in Western Sahara if they so choose.
 - II. Give effect to the right of self-determination, as guaranteed in the UN Charter and common Article 1 of the ICCPR and ICESCR, and guarantee and support the realization of the right through unrestricted support to the United Nations in its administration of a free, fair and transparent referendum by which the Saharawi people can determine their political status.
 - III. Formally accept its status as an occupying power and assume its responsibilities in terms of reporting on the socio-economic rights of the Saharawi people pursuant to the ICCPR, ICESCR and the Fourth Geneva Convention.
 - IV. Immediately and unconditionally release Saharawi imprisoned human rights defenders currently imprisoned for defending their socio-economic rights, including those arrested in the Gdeim Izik protest camp in 2010.

⁴⁶ World Food Programme, November 2021, Algeria Country Brief, https://reliefweb.int/sites/reliefweb.int/files/resources/2021%2011%20Algeria%20Country%20Brief_0.pdf

⁴⁷ Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §77.

⁴⁸ Ibid. §103.

- V. Implement measures which safeguard the principle of consent of the people of Western Sahara, in order that they may exercise their right to enjoy and utilize fully and freely their natural wealth and resources.
- VI. Refrain from any further natural resource-related activities and investments of large infrastructure programmes, including large-scale renewable energy projects, in Western Sahara until the final status of the territory has been established through the exercise of self-determination by the people of the territory.
- VII. Allow an independent, free-ranging and continuous assessment of the human rights situation in Western Sahara in a manner that accounts for the impact of the exploitation of the territory's resources on the human rights of the Saharawi people.
- VIII. Immediately allow all persons in occupied Western Sahara the assurance and the protection of their rights of freedom of conscience, of peaceful assembly and association, and of expression, including such persons and groups concerned with the protection of the environment and development of natural resources.
- IX. Accurately inform its trading partner states and companies about the status of Western Sahara as a Non-Self-Governing Territory, including its status as not part of Morocco, and about the resulting obligations for those trading partners vis-à-vis the Saharawi people.
- X. Restore the *status quo ante* of its resource exploitation in the territory and provide compensation for the illegal exploitation of finite resources.
- XI. Initiate the establishment of a mechanism to preserve revenues from the exploitation of Western Sahara's natural resources under international administration until the status of the territory has been resolved.
- XII. Increase accountability and transparency in the derivation and use of profits from natural resources in Western Sahara by allowing for third party, neutral accounting of all resource-related activities and exports.
- XIII. Refrain from engaging in any economic activities in or relating to the territory of Western Sahara that do not have the consent of the people of the territory, in compliance with international and recent EU jurisprudence.
- XIV. Immediately cease all incentives and actions that would alter the demographic composition of the population in Western Sahara.

- XV. Ensure the Working Group on Business and Human Rights can freely visit throughout Western Sahara.
- XVI. Allow independent groups, parliamentarians and journalists access to Western Sahara to monitor the Saharawi people's socio-economic situation.
- XVII. Commit to its obligations as an occupying power in the conservation of natural resources and protection of the environment in occupied Western Sahara.
- XVIII. Engage in full cooperation with Spain as the colonial administering state with principal or first responsibility among states for the protection of human rights in Western Sahara, and a proper and complete implementation of the UN Charter, ICCPR and ICESCR throughout the territory.